

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 2246/1995

New Delhi this the 28th Day of February 1996

Hon'ble Shri A.V. Haridasan, Vice Chairman (J)

Hon'ble Shri R.K. Ahooja, Member (A)

Shri Moinuddin,
Son of Late Shri Hamiduddin,
R/o Sector No. VIII,
Quarter No. 850,
R.K. Puram,
New Delhi

Applicant

(By Advocate: Shri S.K. Bisaria)

Vs

1. Lt. Governor
through
Chief Secretary (NCT),
5 Sham Nath Marg,
Delhi.
2. Director of Education,
NCT,
Old Secretariat,
Delhi.

Respondents

(By Advocate: Shri Rajinder Pandita)

O R D E R

Hon'ble Shri A.V. Haridasan, Vice Chairman (J)

The applicant who was born on 9.7.1935 commenced his career as Junior Physical Education under the respondents. On 1.2.1964 he was later promoted as Senior Physical Education Teacher in the year 1987. While working as Junior Physical Education Teacher, the applicant received a State Award for the year 1984 vide Award Certificate dated 17.3.1985. Normally, as Senior Physical Education Teacher, the applicant was to retire on 31.7.1995 on attaining the age of 60 years, but being a State


Awardee as per policy decision of the Government, the applicant was entitled to get two years extension of service on a year to year basis beyond the age of 60 years, on his being found physically and mentally fit and alert and getting the vigilance clearance.

Though the applicant's case for extension of service beyond the age of superannuation as a State Awardee was processed and the requisite certificates regarding work, and conduct, medical fitness and vigilance clearance were forwarded to the competent authority, no order was received granting him extension of service. Anticipating that the order granting the applicant's extension of service would be received in due course, the applicant continued to perform his duties but his pay was stopped after July 1995. Finding that in the case of the applicant no order for granting the extension of service was received the applicant made a representation on 11.10.1995 to the respondent which was rejected on the same day by the Administrative Officer without assigning any reason. The applicant had stated that while the respondent had vide their letter dated 21.9.1995 (Annexure A-4) granted extension in service to Mrs. Mithlesh Kumari Narang, Principal, Govt. Com.(M) Girls Sr. Secondary School, Old Rajinder Nagar, New Delhi, for a period of one year w.e.f. 1.8.1995 to 31.7.1996 for the first term being a State Awardee, the applicant was denied the benefits in a manner arbitrary and unreasonable. Alleging that the action

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of the respondent in denying the benefits of extension of service to the applicant being a State Awardee while granting the same to those similarly situated is arbitrary, unreasonable and wholly unjustified and violative of the provisions of Articles 14, 16, 21 and 39(d) of the Constitution of India and that the Order rejecting his representation is cryptic and devoid of application of mind, the applicant had filed this application under Section 19 of the Administrative Tribunals Act. The applicant had filed this application praying that appropriate Writ Order or Direction may be issued to the respondents, to allow the applicant for extension of service being State Awardee in accordance with the Circular dated 22.7.1985 quashing the letter of rejection of his representation dated 11.10.1995 and to release the salary and allowance of the applicant for the period he has been denied the same.


2. The respondents in their reply contended that the applicant has no right to claim extension of service merely because he is a State Awardee, that in view of the judgement of this Bench of the Tribunal in O.A. No. 1053/1995 directing the Directorate of Education not to consider the extension of retiring officers till they consider the case of the eligible officers in the feeder category - the respondents could not consider the extension of service of the applicant, that the applicant has already given an




undertaking that he would not claim salary or other benefits if his request for extension of service happened to be rejected, that the case of the applicant for extension of service was considered by the competent authority who found that it was not feasible to accede to his request that as the policy decision of the Government to grant extension in appropriate cases does not clothe the applicant with the right of extension of service and that in view of the decision of this Bench of this Tribunal mentioned above, the applicant is not entitled to any relief. The respondents, therefore, prayed that the application may be dismissed.

3. The applicant had filed a rejoinder reiterating the contention raised in the O.A.

4. We have carefully gone through the pleadings and the materials available on record and have heard the arguments of Shri S.K. Bisaria, the learned counsel of the applicant and Shri Rajinder Pandita, the learned counsel of the respondents. That the Administrator, Delhi, had decided that Government Teachers including Headmasters, Vice Principals, and Principals who were recipients of State/National Awards might be granted extension of service after attaining the age of superannuation and that State Awardee and National Awardee ^{was} granted extension of service is not in dispute. According to this decision communicated on 22.2.1985 (Annexure A-3), a




State Awardee could be granted extension beyond the age of superannuation on year to year basis for a period of two years subject to the condition that he/she was physically and mentally alert. The applicant's case for extension was processed in time. His work and conduct were certified satisfactory as is seen from the letter of the Administrative Officer, District South dated 31.7.1995. There is no case for the respondents that the applicant was found either physically or mentally unfit. The only condition that should be satisfied before granting extension to a teacher is a State Awardee according to the policy decision of the Government that he should be physically and mentally alert. The respondents have no case that the applicant is not alert physically or mentally. There is no case that there is any vigilance case pending against the applicant or that the extension of his services beyond the period of superannuation as a State Awardee is not in public interest. The only reason stated in the reply of the respondents justifying the action of the respondents in not giving extension of service to the applicant is that the applicant did not have a right for extension of service to be enforced, that the competent authority had considered his case and rejected and that in view of the direction contained in the judgement of the Principal Bench of the Tribunal in O.A. No. 1053/1995 titled "Smt. Rekha Jain Vs. Union of India and Ors.



not to consider extension of retiring officers till they consider the case of eligible officers in the feeder category, the applicant was not entitled to the extension of service beyond the age of superannuation. We find that none of these reasons Justified the impugned action of the respondents. Though a teacher even if he is a State Awardee is not entitled as of right for extension of service beyond the age of superannuation, in accordance with the policy decision of the Government he had a right to be considered for such extension. The only condition that should be satisfied before the competent authority decide to grant extension of service in such a case is whether the teacher concerned is physically and mentally alert of course apart from the fact ^{whether} ~~that~~ it would be in public interest to grant extension in the individual case. The policy decision to grant extension of service itself was taken obviously after considering the public interest that it would always be advisable to retain in service a modal teacher even beyond the period of his superannuation if he is physically and mentally alert for a specified time. So extension of service of the applicant could not be said to be not in public interest if there is no circumstance which specifically makes his continuous not in public interest. Now coming to the physical and mental alertness of the applicant there is no case for the respondents that the applicant is not either physically or mentally alert. The representaion

submitted by the applicant on 11.10.1995 was rejected on the very same day without assigning any reason at all. This order rejecting the representation of the applicant is cryptic, non speaking and therefore bereft of application of mind. The argument based on the direction contained in the judgement in O.A. No. 1053/1995 Smt. Rekha Jain Vs. Union of India and Ors is also untenable and fallacious. In the case of Mrs. Rekha Jain, the complaint of the applicant Mrs. Rekha Jain was that the respondents therein viz., the Government of the National Capital of ~~Union~~ Territory of Delhi and the Directorate of Education were without considering the case of promotion of the officers in the feeder category filling up the post of Deputy Director of Education by giving extension of service to retiring officers. Mrs. Rekha Jain who was one among the feeder category for promotion to the post of Deputy Director had filed the above said application for a direction to the respondents therein to hold DPC and to consider those who are in the feeder category for promotion as Deputy Director of Education and not to fill the vacancies by extension of retiring officers. The above application was disposed of with the following directions in paragraph 6:

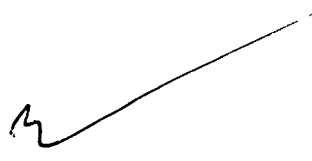
"The respondents are directed to consider for adhoc promotion to the post of Deputy Director eligible officers including the applicant, within a period of one month from



today. The respondents are also not to consider extension of retiring officers till they consider the case of the eligible officers in the feeder category".


It is evident that the Bench was concerned only with a case of promotion to the post of Deputy Director of Education and there the direction was to consider for ad hoc promotion to the said post all eligible officers in the feeder category including the applicant and that till then the respondents should not consider the extension of retiring officers. This cannot be interpreted by any reasonable stretch of imagination to say that the Tribunal had directed the Government of the National Capital Territory of Delhi not to consider the extension of services of any officer in any cadre under any circumstances. The stand of the respondents is that the applicant's extension of service was not feasible by reason of the above direction in the judgement of the Tribunal in O.A No. 1053/95 does not appear to be bonafide at all.

5. Shri Rajinder Pandita, counsel appeared for the respondents argued that the Principal Bench of the Central Administrative Tribunal had in O.A. No. 2245/1990 had dismissed an application similar to this on the ground that after modification of the policy in regard to grant of extension of service to the teachers/principals who are National/State Awardees by a decision of the Administrator dated



25.9.1990 dispensing with the extension of service and giving the awardees a sum of Rs. 5,000/- and a medal of merit along with merit scroll, a State Awardee was not entitled for extension of service and that therefore the applicant is not entitled to relief claimed by him. ^Aperusal of a copy of the judgement in the said case shows that this argument also does not have any merit at all. The applicant before the Tribunal in the said case had obtained a State Award on 5.9.1990. The decision of the Administrator dated 29.5.1990 which was conveyed by the Joint Secretary (Education), Delhi Administration to Deputy Director Education reads as follows:

"I am directed to inform you that the matter regarding granting extension in service to the Teachers/Principals who are National/State Awardees has been re~~con~~sidered and the Administrator, Delhi has ordered that:-

- (1) the extension in service on the basis of the State Awards should not be given with effect from the year 1990 i.e for those teachers/Principals who will be selected for State Awards in the year 1990.
 - (2) State Awardee would be given a cash award of Rs.5000/- in place of Rs.500/- and a medal of merit alongwith merit scroll.
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In view of the above order, I am to request you to take necessary steps to amend the provision of the Education Act, 1973 accordingly."

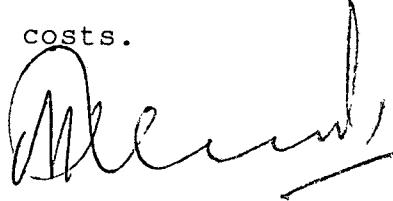
It was taking note of the fact that the applicant Shri Jagdish Kumar Bector was conferred a State Award on 5.9.1990 i.e. after the policy of granting of extension in service was discontinued and a decision was taken to give Rs. 5,000/- and a medal of merit alongwith merit scroll to the State Awardees in place of Rs. 500/- which was given till then that the Bench held that the applicant in that case was not entitled to the extension of service as he was given by the modified decision. It was also noted that it was not his case that any person who was the recipient of the State Award after 29.5.1990 was given extension in service. In the case on hand the facts are different. The applicant admittedly was recipient of a State Award of the year 1985. He must have been given a sum of Rs. 500/-. The extension in service on the basis of the State Award was not to be given with effect from the year 1990 i.e. for the Teachers/Principals who would be selected for State Award in the year 1990 but no decision was taken not to grant extension of service to teachers/principals who were recipient of the State Award prior to the year 1990. The argument based on this judgement is therefore untenable. The case of the applicant that

by order dated 21.9.1995 Mrs. Mithlesh Kumari Narang, Principal, Govt. Com (M) Girls Senior Secondary School, Old Rajinder Nagar, New Delhi ^{was given extension in service} has not been controverted by the respondents in their reply. If the respondents were under the impression ^{that} by reason of the direction contained in the judgement in Mrs. Rekha Jain's case ^{when} it was decided on 20.7.1995 they could not consider extension in service of any retiring officers, the respondents could ^{have} not ^{issued} the order dated 21.9.1995 (Annexure A-4) by which extension in service was granted to Mrs. Mithlesh Kumari Narang who was a State Awardee. Therefore, it is obvious that the respondents have arbitrarily discriminated ^{against} the applicant in the matter of grant of extension in service beyond the age of superannuation as a State Awardee.

6. In the result in the light of what is stated above the Order dated 11.10.1995 rejecting the representation of the applicant for giving him the extension in service is quashed and set aside. The respondents are hereby directed to consider the case of the applicant for extension in service as he being a National Awardee and to issue necessary order granting him such extension from the date of his superannuation in accordance with the policy decision dated 22.7.1985 if he is not otherwise unsuitable or ineligible for such extension while taking a

decision on this, the observations made in the foregoing paragraphs of this Order shall be borne in mind by the competent authority. If the extension is so granted to the applicant it shall take effect from the date of his superannuation i.e. 31.7.1995 and the applicant shall be eligible for all consequential benefits including pay and allowances. A decision as above directed shall be taken and communicated to the applicant within a period of one months from the date of communication of the copy of this Order. There is no order as to costs.


(R.K. Ahooja) 28/7/96
Member (A)


(A.V. Haridasan)
Vice Chairman (J)

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